

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

VIRTAMOVE, CORP.,	§ Case No. 2:24-cv-00093-JRG
	§ (Lead Case)
Plaintiff,	§
	§
v.	§ JURY TRIAL DEMANDED
	§
HEWLETT PACKARD ENTERPRISE COMPANY,	§
	§
	§
Defendant.	§
	§
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VIRTAMOVE, CORP.,	§ Case No. 2:24-cv-00064-JRG
	§ (Member Case)
Plaintiff,	§
	§
v.	§ JURY TRIAL DEMANDED
	§
INTERNATIONAL BUSINESS MACHINES CORP.,	§
	§
	§
Defendant.	§
	§
	§

**ORDER GRANTING INTERNATIONAL BUSINESS MACHINES CORP.'S
MOTION TO EXCLUDE CERTAIN OPINIONS OF DR. SAM MALEK**

Having considered Defendant and Counter-Plaintiff International Business Machines Corp.'s ("IBM") Motion to Exclude Certain Opinions of Dr. Sam Malek and the associated briefing and any other materials in the record, **IT IS HEREBY ORDERED** that:

1. Dr. Malek is prohibited from offering his opinions that rely on new claim constructions never raised during the *Markman* process and ¶ 239 of the Opening Expert Report of Dr. Sam Malek ("Malek Op. Rpt.") is stricken;
2. Dr. Malek is prohibited from offering his opinions that any prior art computing system would render the Havemose Patents obvious based on his incorrect interpretation of the "wherein"

clauses in the Havemose Patents' asserted claims and ¶¶ 316–18, 375–77, 425–27 of the Malek Op. Rpt. and ¶¶ 72, 77, 80, 82, 84, 86, 88, 90 of the Rebuttal Expert Report of Dr. Sam Malek ("Malek Reb. Rpt.") are stricken;

3. Dr. Malek is prohibited from offering his opinions that IBM's infringement allegations against the accused VirtaMove V-Migrate and V-Maestro products are directed against those products in combination and that V-Migrate does not infringe on its own and ¶¶ 54, 104-105, 118, 138-139, 153, 183-184, 229-230 of the Malek Reb. Rpt. are stricken; and
4. Dr. Malek is prohibited from offering his opinions that ceasing the sale of the V-Maestro product is an acceptable non-infringing alternative to the Counterclaim Patents and ¶¶ 250-254 of the Malek Reb. Rpt. are stricken.

Defendant's motion is **GRANTED**.